

Stockholm, 5th of September 2003

European Commission, the Audiovisual
and Media Policies Unit of the DG for
Information Society and Media,
Brussels, Belgium

Contribution from Swedish authors and performing artists to the public consultation on the revision of the EU Council Directive 89/552/EEC ‘Television without frontiers’ (the TV Directive)

We, 17 member organisations of KLYS (The Swedish Joint Committee for Artistic and Literary Professionals), representing some 30.000 individual Swedish artists, among these creative and performing artists involved in the making of films and other television content, would like to address the European Commission on the revision of the ‘Television without frontiers’ Directive. KLYS urges the Commission to take the opinions of these organisations into serious consideration.

Our written contribution will be limited to the provision of the TV Directive that regulates the insertion of advertisements (Article 11).

The respect for artists’ intellectual property rights is of fundamental importance in all TV broadcasting. Both the Moral and Economic rights of film creators and performers must be taken into account in the review of the TV Directive.

Article 11.1 in the current TV Directive stipulates as a principle rule that advertisements shall be inserted *between* programmes. This is a very important principle to authors and performing artists whose artistic works and performances are broadcast in TV. However, the effect of this very clear regulation is undermined by the following sentence in article 11.1, which says that under certain conditions advertisement interruptions are permitted *during* programmes in such a way that the integrity and the value of the programme and the rights of the rights holders are not prejudiced. The condition concerning commercial breaks in feature films or films made for television is that advertisements must be broadcast within certain intervals according to article 11.3. This exception to the principle rule is systematically used by commercial TV companies all around Europe who mutilate films by interrupting them with advertisements.

In our opinion this loop-hole in the EU regulation is in conflict with the Moral rights granted to authors in the Berne Convention, which assures that the author shall have the right to object to any distortion, mutilation or other modification of, or other derogatory action in relation to the work, which would be prejudicial to his honour or reputation. It is quite obvious that breaks and interruptions in a film are such mutilations of a work which constitutes a violation of the Moral rights of film creators.

Few film creators and performers take legal action against broadcasters when they interrupt their films with advertisements. Not because they do not care, but because a lawsuit is always inconvenient and can be very costly in terms of time and money. However, two Swedish film creators, Mr Vilgot Sjöman and Mr Claes Eriksson have recently, with the support from KLYS, gone to court to try if TV4 (the biggest private TV company in Sweden) has infringed their Moral rights to their films ('Alfred' and 'Hajen som visste för mycket') by inserting advertisement interruptions in them. **According to the judgement of the City Court of Stockholm on the 20th December 2004 commercial breaks in these two films do constitute a violation of the Moral rights of the filmmakers.** (TV4 has appealed against the judgement and the legal process will continue in the Stockholm Court of appeal.) **KLYS' strong belief is that this important judgement must be taken into account when reviewing the TV Directive and its provision on advertisement interruptions.**

Until 1 April 2002, the Swedish Radio and Television Act totally prohibited commercial breaks during the broadcast of films or programmes with respect to the audience and to the moral rights of filmmakers. Despite strong protests from the organisations of Swedish authors and performers as well as individual authors and performers, the Swedish Parliament implemented article 11.3 of the TV-Directive, which allows advertisement interruptions in films within certain intervals, in the Swedish Radio and Television Act. The reason for this change is partly the stiff competition from satellite transmissions to Sweden from Swedish broadcasters domiciled in other countries within the EU, who are not bound by Swedish law, and partly the way that the Swedish commercial TV company TV4 skirted the prohibition by interrupting films or programmes with news summaries and other short programmes surrounded by advertisements. Since the amendments were introduced in the Swedish Radio and Television Act TV4 has systematically used the new possibility to mutilate films by interrupting them with advertisements.

It is our considered opinion that EU regulation (and national legislation in European countries) should clearly stipulate that films must be broadcast in the version that the authors have approved. Now that the TV Directive is being revised, it is high time to protect the Moral rights of the creative people involved in the making of films without whose work there would be little to broadcast. **Adding a clear stipulation that advertisements and other programmes may not be inserted into any feature film, documentary or film made for television is of greatest importance for television viewers all over Europe as well as for authors, performers and other artists who are taking part in the creation of films.** An added advantage is that such a stipulation would render pointless the argument about reducing competition.

To conclude, KLYS is convinced that Moral rights must be better protected in the future TV-Directive. The artistic authors and performers of films shall have the right to have their work exhibited in the form in which it was originally created.

Please feel free to contact the KLYS office if you have inquiries on this matter. KLYS' coordinator/ legal adviser Ulrica Källén or the president of KLYS mr Peter Curman can be reached by e-mail: council@klys.se, phone: 0046 (0) 8 – 667 88 90, fax: 0046 (0) 8 – 667 88 11 Address: KLYS, Industrigatan 2 A, 10 tr, 112 46 Stockholm, Sweden

You can also read more about the Swedish legal process on commercial breaks in films on our website www.klys.se

Yours sincerely,

The Swedish Writers Union

The Swedish Association of Stage and Screen Directors

The Swedish Playwrights' Union

The Independent Filmmakers' Union of Sweden

The Swedish Photographers' Union

The Swedish Union of Theatrical Employees

The Swedish National Artists' Organization

The Swedish Directors

The Swedish Association of Authors of Educational Material

The Association of Swedish Illustrators

The Swedish Association of Craft and Design

The Swedish Union of Architects

Society of Swedish Composers

The Swedish Society of Popular Music Composers

The Swedish Federation of Professional Musicians

The Swedish Musicians Union

The Swedish Union for Clerical and Technical Employees in Industry